

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.
O R D E R

Rajmata Gayatri Devi
Versus
Distt.Judge, Jaipur City, Jaipur & Ors.

S.B. CIVIL WRIT PETITION NO.3947/2007.

Date of Order : 27/9/2007.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri G.K. Garg with
Shri Saransh Saini for the petitioner.
Shri D.K. Malhotra with
Shri J.S. Garkal,
Shri Rajesh Malhotra and
Shri D.K. Dixit for the respondents.

Reportable

The petitioner in this writ
petition seeks to challenge the order
dated 11/5/2007 passed by the District
Judge, Jaipur City, Jaipur thereby
rejecting her application filed on
26/4/2007. This application was filed by

the petitioner in the pending proceedings under Section 372 of the Indian Succession Act, 1925 (hereinafter referred in short as the "Act") which in fact was jointly filed on 20/2/1998 by the petitioner, Rajkumari Lalitya and Rajkumar Dev Raj, respondents No.2 and 3, respectively for issuance of Succession Certificate with regard to properties of late 'Maharaj' Jagat Singh who died on 5/2/1997. When notices of the petition under Section 372 of the Act were issued, other legal representatives of late 'Maharaj' Jagat Singh namely; Maharaj Prithvi Singh and 'Maharaj' Jai Singh admitted to the claim of the aforementioned three applicants to inherit estates of late 'Maharaj' Jagat Singh in equal proportion. Yet another

brother 'Maharaj' Bhawani Singh objected to the same. Subsequently, however, he also by written application withdrew his objection and 'Maharaj' Bhawani Singh subsequently also submitted an application stating that he would have no objection to succession certificate being granted in favour of all three applicants viz. the petitioner, respondent No.2 and respondent No.3 herein. In fact, statement of the petitioner Rajmata Gayatri Devi was recorded on 26/4/2006 in which, she admitted the right of the respondents, son and daughter of late 'Maharaj' Jagat Singh, to inherit the estates of their father in equal share along with her. The petitioner thereafter filed an application before the court of District Judge on

11/5/2007 thereby seeking to withdraw her admission made before that court in her statement recorded on 26/4/2006 on the premise that she has now discovered a will executed by her son late 'Maharaj' Jagat Singh on 23/6/1996. She moved another application before the court of District Judge through her power of attorney holder on 20/5/2006 with the prayer that succession certificate be now issued only in her name alone. Two brothers of 'Maharaj' Jagat Singh, namely, 'Maharaj' Prithvi Singh and 'Maharaj' Jai Singh also filed application before the court on 24/5/2006 resiling from their earlier stand and seeking to withdraw the no objection/consent filed by them for granting succession certificate in favour

of the three applicants. It is in the backdrop of these facts that the petitioner filed an application u/S.276 of the Act before the Court of learned District Judge on 3/7/2006 inter-alia for grant of letter of administration. In view of contest between the parties, it was directed by the court vide its order dated 12/1/2007 that application should be decided as a suit. In that view of the matter, the petitioner through her power of attorney holder moved application before the court that proceedings of the application under Section 372 should be stayed to await the decision of the proceeding under Section 276 of the Act. The learned District Judge rejected the said application vide order dated

11/5/2007, which is subject-matter of challenge in the present writ petition.

2) I have heard Shri G.K. Garg, learned counsel for the petitioner and Shri D.K. Malhotra, learned counsel for the respondents.

3) Shri G.K. Garg, the learned counsel for the petitioner argued that Section 370 of the Act provides that succession certificate shall not be granted with respect to any debt or security to which a right is required by section 212 or section 213 to be established by letters of administration or probate. It was argued that Section 212 of the Act provides that that no right to any part of the property of a person who has died intestate can be established in any Court

of Justice, unless letters of administration have first been granted. However, Section 213 of the Act provides that no right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed. Learned counsel for the petitioner further argued that even if Section 213(2)(i) of the Act provides that in the cases where Wills are made by any Hindu, Buddhist, Sikh or Jain, where such Wills are of the classes specified in clauses (a) and (b) of Section 57 which debars such application

under Section 213(2) to be made outside the territorial jurisdiction of the High Courts at Calcutta, Madras and Bombay, that cannot be made basis for discriminating against all Hindus residing in other parts of the country including the State of Rajasthan. In fact, learned counsel submitted that in the State of Rajasthan probate was not required to be obtained for the will, as held by this Court in **Smt.Roopa Bai & Ors. Vs. Hukum Singh : RLR 1987(1) 550** and the court in view of the fact that there were conflicting views of the co-ordinate Benches and also because the court found that this amounted to discrimination qua the petitioner in that case on territorial considerations, referred the said

question to the Larger Bench for adjudication and consideration. Learned counsel however, could not point out as to whether reference has been answered or not and if so, in what manner.

4) Though the petitioner did not implead the respondents No.2 and 3 as party to the aforesaid petition filed under Section 276, the respondents on coming to know of the said petition on their own filed an application for their impleadment and also objections about its maintainability. In view of the contest between the parties, the learned trial court converted the proceedings under Section 276 of the Act into regular suit vide order dated 12/1/2007.

5) Shri G.K. Garg, the learned counsel

for the petitioner argued that the question regarding issuance of succession certificate does not arise unless substantive right between the parties have been crystalized in the proceedings under Section 276 of the Act for grant of letter of administration. It was argued that on the analogy given in Section 370 of the Act provisions of Section 213 shall also apply to Will executed in the State of Rajasthan particularly when there is no prohibition under the Act for obtaining probate/letter of administration for such wills even in the State of Rajasthan. When provision of Section 213 read with Section 370 of the Act are read together, letter of administration may also be required to be obtained in relation to the properties

situated in the State of Rajasthan in view of the intendment of the legislation inbuilt in Section 370 of the Act. The proceedings u/S.372 of the Act pending before the learned District Judge for issuance of succession certificate therefore is required to be held in abeyance/stayed till any final adjudication is made in the proceedings u/S.376 of the Act. Learned counsel for the petitioner therefore prayed that impugned order be set-aside and writ petition be allowed in terms of the application filed before the court of District Judge.

6) Per contra, learned counsel for the respondents argued that there is no prohibition in law under Section 372 of

the Act for grant of succession certificate while simultaneously proceedings under Section 276 of the Act are pending for grant of probate/letter of administration. In fact, Section 215 of the Act clearly safeguards the interest of the contesting parties in this respect by providing that grant of probate or letter of administration in respect of an estate can be issued to supersede any certificate provisionally granted under Part-X of the Act in respect of any debts or security included in an estate. It was argued that sub-Section (3) of Section 373 of the Act provides that if the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for

determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* best entitlement thereto. It was argued that applicants in the petition filed under Section 372 of the Act are the mother, son and daughter of the deceased 'Maharaj' Jagat Singh who are prima-facie best entitled to the grant of succession certificate. In view of Section 215 of the Act, if eventually probate/letter of administration is issued in whatever form in a proceeding under Section 276, the same shall in any case supersede the succession certificate granted in proceedings under Sections 372 of the Act in Part-X of the Act. No prejudice would therefore be caused to the

petitioner on continuation of the proceedings. Even otherwise, she being one of the applicants, would be the beneficiary of the succession certificate which may be granted by the court. It was further argued that petitioner having deposed in the court in favour of grant of succession certificate and other brothers having also consented to the issuance of the same, cannot be now permitted to resile from that stand and withdraw even if the the proceedings under Section 276 of the Act are separately pending. It was argued that in view of the scheme of the Act, an application filed under Section 372 of the Act does not operate as bar on continuation of separate proceedings under Section 372 of the Act. It was further

argued that Sections 212 and 213 of the Act are not applicable to the State of Rajasthan and, therefore, same cannot be applied to the present proceedings on the basis of supposed intention of the legislature.

7) Responding to the judgment cited by the learned counsel for the petitioner in Smt.Roopa Bai supra, with regard to validity of Section 213 of the Act on the ground of discrimination, it was argued that he has not brought to the notice of the court any decision rendered by the Larger Bench. Relying on the judgment of the Supreme Court in **Clarence Pais and others Vs. Union of India : AIR 2001 SC 1151**, Shri D.K. Malhotra, the learned counsel for the respondents argued that

the Supreme Court in that case negatived the argument of discrimination. Shri D.K. Malhotra, learned counsel for the respondents while relying on the judgment of the Supreme Court in **Madhvi Amma Bhawani Amma & Ors. Vs. Kunjikutty Pillal Meenakshi Pillai & Ors. : AIR 2000 SC 2301** further argued that Supreme Court while considering the provisions of Section 372 of the Act, held that proceedings of that Section for grant of succession certificate would not create a bar for any party to raise the same issue in a subsequent suit and that the decision in such succession certificate proceedings does not operate as *res-judicata*. Relying on the Division Bench's judgment of this Court in **Balkishan and another Vs. Prabhu**

and others : AIR 1950 Rajasthan 27, learned counsel for the respondents argued that in that case also this Court in similar circumstances held that the plaintiff is entitled to succeed to the property of the deceased in case of intestacy and the defendant cannot defeat the plaintiff's right by merely saying that under a will of the deceased the property is bequeathed to him. Learned counsel for the respondents also relied on the judgment of Allahabad High Court in **Smt.Pitmo Vs. Shyam Singh : AIR 1978 All. 301** in which it was held that a probate is not necessary for the establishment of a right under a will by a Hindu where the provisions of clauses (a) and (b) of Section 57 are not attracted and therefore

Section 213 would have no application. Section 57 would be attracted only where Sections 212 and 213 apply. Shri D.K. Malhotra, learned counsel for the respondents also relied on the judgment of Supreme Court in **Mrs.Hem Nolini Judah Vs. Mrs.Isolynelean Sarojbashini Bose & Ors. : AIR 1962 SC 1471** and argued similar argument as raised hereinabove, was also rejected in that case. Learned counsel for the respondents submits that when in the State of Rajasthan, the probate/letter of administration is not required to be obtained, the prayer seeking stay of the proceedings under Section 372 of the Act would rather seem too far off the mark. It was therefore submitted that the writ petition be dismissed.

8) I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the material on record and respectfully studied the cited case law.

9) Sole basis on which prayer for suspending proceedings before the District Judge under Section 372 is founded is the supposed intention of the legislature said to be contained in the provisions of Section 370 of the Act. Section 370, inter-alia provides that succession certificate shall not be granted under this Part with respect to any debt or security to which a right is required by Section 212 or Section 213 to be established by letters of administration or probate. When a close scrutiny of this

section is made, it becomes obvious that a succession certificate with respect to any debt or security shall not be granted under Part-X of the Act with respect to which a right is required by Sections 212 and 213 to be established by letter of administration /probate. Issuance of succession certificate can be thus denied only if right on which such claim is based, is required to be first established by letters of administration /probate issued under Section 212 or 213 of the Act. Everything therefore would turn on the interpretation of the words "a right is required" by Section 212 or 213 "to be established by letters of administration/probate." Section 213 inter-alia provides that no right as

executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with an authenticated copy of the Will annexed. This is reflected from sub-section 2(i) of Section 213 provides that in the case of Wills made by any Hindu, Buddhist, Sikh or Jain where such Wills are of the classes specified in clauses (a) and (b) of Section 57; and sub-Section 2(ii) which provides that in the case of Wills made by any Parsi dying after the commencement of the Indian Succession (Amendment) Act, 1962, where such Wills are made within the local limits of the

territorial jurisdiction of the High Courts at Calcutta, Madras and Bombay, and where such Wills are made outside those limits, in so far as they relate to immoveable property situated within those limits, no right as executor or legatees can be established in any court, unless probate or letter of administration of the will is granted by a competent court. This controversy was settled long ago by a Division Bench of this Court in **Sunderlal and Teeja Vs. Nena, D.B. Civil Regular First Appeal No.83 of 1952** decided on 16/11/1954 referred to in the case of **Mst.Jadav Vs. Ram Swarup 1960 RLW 685** and **Sultan Singh Vs. Brijraj Singh : 1997(1) WLC 368** holding that probate would not be required to be obtained for enforcement of

the will in so far as the State of Rajasthan is concerned. These decisions were approvingly followed recently by the Division Bench of this Court in **Mukund Bihari Sharma Vs. Satya Narayan (D.B. Civil Special Appeal (Writ) No.1232/2006 decided on 2/4/2007** wherein, the Division Bench held that in the State of Rajasthan, it is not necessary to obtain probate or letters of administration of the will as otherwise required under Section 213 of the Act. When the law which has developed on the subject is otherwise available, contention of the petitioner that requirement of obtaining probate or letter of administration should be insisted, on the basis of supposed intention of the legislature to be inferred in Section 370,

cannot be accepted.

10) Adverting now to the argument that even if Section 213 read with Section 57 has not made mandatory for the concerned parties to obtain letter of administration in respect of the properties, which are subject-matter of the will, concerned party can nevertheless approach the court for obtaining the probate/letter of administration, for there is no prohibition or bar in the law, though this issue directly does not arise for decision in the scope of the present petition where the order refusing to stay the proceedings under Section 372 of the Act is impugned. But indirectly it does arise because the petitioner is inviting this Court into holding that since there

is no bar contained in any of the provisions of the Act for initiating proceedings to obtain probate/letter of administration in the State of Rajasthan and when such proceedings have actually been initiated, the proceedings under Section 372 of the Act should remain halted till conclusion of the proceedings under Section 276, which proceedings in view of the contest between the parties have now been ordered to be proceeded as a regular suit. Section 276 merely provides for particulars and details which are required to be furnished in the petition for probate. But then, this argument is again founded on the supposed intention of the legislature as put by the learned counsel for the petitioner. In fact, no

such intention is discernible from reading of provisions of Section 370. What is more, an analytical examination of Section 370 read with Section 213 and 57, renders the finding of an otherwise expressed intention of the legislature that there shall be no requirement of obtaining probate or letters of administration by a Hindu, Buddhist, Sikh and Jain in the territory of the States other than the States of Bengal, Madras and Bombay. Proceedings of a petition filed under Section 372 cannot be therefore stayed on taking such an overstretched interpretation of Section 370 of the Act. In fact, Section 215 of the Act, supra, gives the rational of the scheme of the enactment when it provides that grant of

probate or letters of administration in respect of an Estate shall be deemed to supersede any certificate provisionally granted under Part-X in respect of any debts or securities included in the State. Section 370 and 372 both being of Part-X of the Act, obviously therefore the probate or letters of administration, if any, granted in a later point of time would supersede a provisionally granted succession certificate. There would be thus no reason to suspend the proceedings under Section 372. As rightly held by the Hon'ble Supreme Court in *Madhvi Amma Bhawani Amma*, supra, that any decision made in proceedings under Section 373 of the Indian Succession Act, 1925 for grant of succession certificate would not create

a bar to raise the same issue again in a subsequent suit and the decision in succession certificates proceedings in that event would not operate as *res-judicata*.

11) There is yet another reason why proceedings under Section 276 cannot be override the proceeding u/S.372 of the Act which is that while on one hand, the rights to debt and security in the estates of deceased 'Maharaj' Jagat Singh are being claimed on the basis of a will which right is yet to be crystalized in a proceeding under Section 276. And as per the interpretation made above and in view of Section 212 and Section 57 of the Act letter of administration and probate are not strictly required, the petitioner

having voluntarily initiated such proceeding not being barred. On the other hand, proceedings initiated under Section 372 are at the instance of natural mother i.e. the petitioner herself and natural son and daughter of late 'Maharaj' Jagat Singh. According to the spirit of sub-section (3) of Section 373, if the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person *prima-facie* best entitled thereto and the applicants in a petition under Section 372 are claiming succession certificate being legal heir of the first

degree of the deceased as per the law, proceedings of the petition filed under Section 372 of the Act cannot be stayed at the asking of the petitioner just because petition filed at her instance under Section 276 has been ordered to be tried as a regular suit.

12) In view of what discussed above, I do not find any legal infirmity in the impugned-order dated 11/5/2007 passed by the learned District Judge, Jaipur City, Jaipur which can be described as an error apparent on the face of record so as to justify interference by this Court in the scope of writ of certiorari.

There being no merit in the petition, the same is dismissed though with no order as to costs.

Records of the case may be
forthwith transmitted to the court of the
District Judge.

(MOHAMMAD RAFIQ), J.

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